

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA : 09-cr-405(ADS) (GRB)
: 12-cr-183
:
- versus - : U.S. Courthouse
: Central Islip, New York
FREDERICK CELANI, :
also known as :
"Sidney F. Levine," :
Defendant : March 21, 2013
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR GUILTY PLEA
BEFORE THE HONORABLE GARY R. BROWN
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: Calling 09-cr-505 and 13-cr-183,
2 United States of America v. Frederick Celani.

3 Counsel, state your appearances for the record.

4 MR. CANTY: Good morning, your Honor.

5 On behalf of the United States, Michael Canty,
6 along with Assistant United States Attorney Demetri
7 Jones.

8 MS. JONES: Good morning, Judge.

9 THE COURT: Good morning.

10 MR. LARUSSO: Good morning, your Honor.

11 Robert LaRusso for Mr. Frederick Celani, who is
12 in court. Also with me is Mr. Andrew Oliveras, who was
13 appointed by Mr. Spatt to assist me --

14 MR. OLIVERAS: Good morning.

15 MR. LARUSSO: Judge Spatt to assist me.

16 THE COURT: Excellent.

17 MR. OLIVERAS: Good morning.

18 MR. LARUSSO: May I just at the start say thank
19 you, Judge.

20 THE COURT: No problem.

21 MR. LARUSSO: I'm sure you understand I have to
22 be in White Plains and what you are doing is appreciated.

23 THE COURT: We will get this done. However, I
24 want to make sure what we're getting done. I understand
25 that there has to be an arraignment on one of the cases;

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1 is that right?

2 MR. CANTY: Your Honor, there was a Rule 20
3 transfer from the Central District of Illinois, so the
4 defendant should enter a plea, an initial plea with
5 respect to the Rule 20 --

6 THE COURT: Actually, I have that question. Is
7 he pleading guilty to that charging instrument, too?

8 MR. CANTY: The plea agreement includes one
9 count from the Central District of Illinois and one from
10 the Eastern District of New York.

11 THE COURT: All right. So, it's always
12 puzzling to me when I have to an arraignment to make the
13 defendant say not guilty to a document that two minutes
14 later he is going to tell me he is guilty potentially.
15 Is that right?

16 MR. CANTY: I understand the -- yes, that often
17 happens.

18 THE COURT: Would a waiver of arraignment be
19 sufficient?

20 MR. LARUSSO: Yes, Judge. I don't know if he's
21 allowed to plead not guilty under a Rule 20 transfer. I
22 think the statute says he's got to plead guilty.

23 THE COURT: To the extent that an arraignment
24 is technically required by the rules, Mr. LaRusso, does
25 your client waive that arraignment?

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1 MR. LARUSSO: He does, your Honor.

2 MR. CANTY: Thank you, your Honor.

3 THE COURT: Good enough?

4 MR. CANTY: Yes.

5 THE COURT: All right. Good.

6 Mr. Celani, let me start with you, sir.

7 Understand my name is Magistrate Judge Brown. I was
8 asked by Judge Spatt who is tied up in another matter to
9 handle your guilty plea. You have no objection to my --
10 proceeding before me today; is that correct?

11 MR. LARUSSO: Your Honor, I apologize, he's --
12 the last couple of months he's lost some hearing.

13 THE COURT: Ah.

14 MR. LARUSSO: I do apologize. I should have
15 made that known to you as soon as possible.

16 THE COURT: That's right. Let me try again.
17 Maybe pull the mic closer to him, so I can hear him.

18 Mr. Celani, can you hear me now, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. So Judge Spatt is the
21 district judge assigned to this case. He's asked me to
22 take your plea today.

23 Do you agree to do that before me instead of
24 before him is the first question?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Have you had enough time to talk to
2 Mr. Larusso? Do you understand what's going on here
3 today?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Good. So you don't
6 need anymore time with Mr. LaRusso. You're good; right?

7 THE DEFENDANT: Um-hum.

8 THE COURT: Okay.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Good. Thank you.

11 MR. LARUSSO: Your Honor, I don't know if this
12 is appropriate. I apologize. There were two other
13 matters that I have had some discussion with the
14 government about that will be part of this agreement even
15 though it's not in writing.

16 We've agreed to allow it to go on the record
17 and supplement it. I would just like to, if it's all
18 right with the government, one of them is that there's a
19 violation of probation out of Illinois that's being
20 covered by this plea. In addition, I believe the
21 government will make a statement now that from my point
22 of view will end any kind of question regarding the entry
23 of the plea at this time.

24 Mr. Canty, can I ask you to make that
25 statement?

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1 MR. CANTY: Well, certainly, Judge. With
2 respect to -- it wasn't probation. He had a violation of
3 supervised release that was filed in the Central District
4 of Illinois and we've received affirmative
5 representations from that office that upon the
6 defendant's guilty plea here, they will dismiss the
7 violation of supervised release. I've conveyed that to
8 defense counsel.

9 The other concern was -- and as it's outlined
10 in the plea agreement, the guidelines estimate that the
11 government has put in the plea agreement that we believe
12 that they are accurate and that a sentence within those
13 guidelines is appropriate, however we don't take a
14 position where within those guidelines the sentence
15 should be. And that's outlined --

16 THE COURT: Isn't that what you always do?

17 MR. CANTY: Yes, your Honor.

18 THE COURT: Yes, okay. Good.

19 MR. LARUSSO: Well, Judge, the reason why it was
20 done is to give Mr. Celani some assurances that the
21 government will be recommending that sentence within that
22 range in case there is a different range that's
23 calculated by the probation department. He just wanted
24 the government's assurance that they would stick to the
25 plea. That's all.

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1 THE COURT: I'm not sure I understand that but
2 that said, Mr. LaRusso, let's go back to the first point.
3 These other charges from another district -- what is it a
4 probation violation did you say?

5 MR. CANTY: It's a violation of supervised
6 release.

7 THE COURT: A violation of supervised release.
8 Are we writing that into 8(a) of the written proffer
9 agreement because -- the plea agreement rather because if
10 we don't write it in, the agreement says this is what's
11 covered under 8(a) and it also says there are no other
12 agreements between the parties.

13 MR. LARUSSO: Judge, I don't think it's
14 necessary to write it in, if we agree that this
15 transcript of this proceeding will be part and parcel of
16 the written agreement. I have no problem in going
17 forward with those terms.

18 MR. CANTY: We have no objection, your Honor.

19 THE COURT: Okay, as long as everyone agrees,
20 we can proceed. All right.

21 So, let me start with Mr. Celani. Mr. Celani,
22 before accepting or recommending acceptance of your plea
23 -- sir, if you don't hear me at any point, let me know.
24 Okay?

25 THE DEFENDANT: Um-hum.

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1 THE COURT: Before accepting or recommending
2 the acceptance of your plea, there are a number of
3 questions I must ask to assure myself that it's a valid
4 plea. If you don't understand any of my questions,
5 please say so and I will reword or rephrase the question;
6 okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Could you swear in the
9 defendant, please.

10 **F R E D E R I C K C E L A N I ,**

11 **called as a witness, having been first duly sworn,**
12 **was examined and testified as follows:**

13 THE CLERK: I need you to state and spell your
14 name for the record.

15 THE DEFENDANT: Frederick Celani, F-r-e-d-i-c-
16 k, last name is C-e-l-a-n-i.

17 THE COURT: Mr. Celani, the first thing you
18 have to understand that now you've been sworn, the
19 answers that you give to my questions will be subject to
20 the penalties of perjury if you make a false statement.

21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How old are you, sir?

24 THE DEFENDANT: 64.

25 THE COURT: Are you a citizen of the United

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1 States?

2 THE DEFENDANT: Am I what, sir?

3 THE COURT: A citizen of the United States.

4 MR. LARUSSO: Citizen of the United States.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Good. How far did you go in
7 school?

8 THE DEFENDANT: Three years of college.

9 THE COURT: Are you presently or have you
10 recently been under the care of a physician or a
11 psychiatrist?

12 THE DEFENDANT: Not a psychiatrist; a
13 physician, yes.

14 THE COURT: For what?

15 THE DEFENDANT: I had a stroke about fifteen
16 months ago and I have high blood pressure and diabetes.

17 THE COURT: Is your mind clear today?

18 THE DEFENDANT: Pardon me, sir?

19 THE COURT: Is your mind clear today? Do you
20 understand --

21 MR. LARUSSO: Is your mind clear?

22 THE DEFENDANT: Oh, yes, sir. Yeah.

23 THE COURT: Do you understand what's happening
24 here?

25 THE DEFENDANT: Oh, sure.

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1 THE COURT: Okay. Good. I am just concerned
2 when you mentioned a stroke, has that affected your
3 ability to understand what's happening?

4 THE DEFENDANT: Absolutely.

5 THE COURT: Absolutely that -- I'm sorry. You
6 can understand what's happening here today
7 notwithstanding the fact that you had a stroke.

8 Is that right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Good.

11 In the past 24 hours, have you taken any
12 narcotic, medicine or pills or drunk any alcoholic
13 beverages?

14 THE DEFENDANT: Narcotics, no. I took you
15 know, the stuff for my diabetes.

16 THE COURT: Okay.

17 THE DEFENDANT: But that's not a narcotic.

18 THE COURT: Right. It doesn't affect your
19 mind, right?

20 THE DEFENDANT: No. No, sir.

21 THE COURT: Okay. Good. Have you ever been
22 hospitalized or treated for narcotics addiction?

23 THE DEFENDANT: No, sir.

24 THE COURT: Your mind is clear today? Your
25 mind is clear today?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: And Mr. LaRusso, have you discussed
3 this matter with your client?

4 MR. LARUSSO: I have, your Honor.

5 THE COURT: And does he understand the rights
6 he will be waiving by pleading guilty?

7 MR. LARUSSO: He does, your Honor.

8 THE COURT: And is he capable of understanding
9 the nature of these proceedings?

10 MR. LARUSSO: He is, your Honor.

11 THE COURT: And any doubt as to his competency
12 to plead guilty?

13 MR. LARUSSO: No, your Honor.

14 THE COURT: All right. So, first of all you
15 have to understand you have the right to plead not
16 guilty.

17 You understand that; right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And if you plead not guilty, under
20 the Constitution and laws of the United States, you are
21 entitled to a speedy and public trial by jury with the
22 assistance of counsel on the charges.

23 Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: At the trial, you would be presumed

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1 to be innocent and the government would have to overcome
2 that presumption and prove you guilty by competent
3 evidence and beyond a reasonable doubt and you would not
4 have to prove that you were innocent. And if the
5 government were to fail, the jury would have the duty to
6 find you not guilty.

7 Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: In the course of the trial, the
10 witnesses for the government would have to come to court
11 and testify in your presence. And your counsel would
12 have the right to cross-examine the witnesses for the
13 government, to object to the evidence offered by the
14 government and to offer evidence on your behalf.

15 Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And if there were witnesses who
18 were reluctant to come to trial, your lawyer could
19 subpoena them and make them come to court.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: At a trial, while you would have
23 the right to testify if you chose to do so, you would not
24 be required to testify. Under the Constitution of the
25 United States, you cannot be compelled to incriminate

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1 yourself. If you decided not to testify, the Court would
2 instruct the jury that they may not hold that against
3 you.

4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you plead guilty and I recommend
7 acceptance of that plea, you will be giving up your
8 constitutional rights to a trial and the other rights
9 I've just discussed. There will be no further trial of
10 any kind and no right to appeal or collaterally attack at
11 any time the question of whether you're guilty or not. A
12 judgment of guilty will be entered on the basis of your
13 guilty plea which judgment can never be challenged.
14 However, you may have the right to appeal the sentence.

15 Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: So on the question of guilt or
18 innocence, if you plead guilty, that's it.

19 Do you understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If you plead guilty, I will have to
22 ask you questions about what you did in order to satisfy
23 myself that you are guilty of the charges to which you
24 seek to plead guilty and you will have to answer those
25 questions and acknowledge your guilt. Thus, you will be

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1 giving up your right not to incriminate yourself.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you willing to give up your
5 right to a trial and the other rights I have just
6 discussed?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Can you outline the plea agreement,
9 please.

10 MR. CANTY: Yes, your Honor. The defendant
11 will plead guilty to conspiracy to commit wire fraud with
12 respect to 09-cr-405, which is --

13 THE COURT: Counsel, just pull the mic a little
14 closer.

15 MR. CANTY: Sorry -- which is a superseding
16 indictment before Judge Spatt. The defendant will also
17 plead guilty to money laundering in connection with the
18 indictment that was transferred from the Central District
19 of Illinois which is docket number 13-cr-183.

20 Would you like me to go through the guideline
21 calculation or the --

22 THE COURT: Go ahead, please.

23 MR. CANTY: Yes. The government has estimated
24 that the defendant's total guideline offense level is 33.
25 However, by pleading guilty he will receive a two level

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1 reduction if warranted at the time of sentencing which
2 brings his adjusted offense level to 31 and by pleading
3 guilty today, will move for an additional one point
4 reduction for a total offense level of 30.

5 Based on the defendant's criminal history
6 category of four, the government estimates that his range
7 of imprisonment is 135 to 168 months.

8 THE COURT: Okay. Can you outline the elements
9 of the offenses, please?

10 MR. CANTY: Yes, with respect to the conspiracy
11 to commit wire fraud, that the defendant used wires that
12 traveled in interstate commerce to commit a fraud.
13 Specifically, through -- he conspired with other
14 individuals to engage in a conspiracy involving Rainmaker
15 managed properties. Through this conspiracy, they made
16 fraudulent statements to individuals that their
17 investments would be used for the purposes of investing
18 in assisted living facilities when, in fact, the
19 defendant knew that the money was not being used to
20 invest in assisted living facilities; that the money was
21 being used for himself or to pay back the investors. It
22 was a Ponzi scheme.

23 With respect to the money laundering, the
24 defendant on or about May 1, 2001, made a financial
25 transaction that occurred in interstate commerce where he

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1 took a check, number 1234, from Morton Community Bank,
2 account number 123-188 and transferred that to an RK
3 Dickson for the purposes of leasing a copying machine.

4 He used this copy machine to further continue a
5 fraud that he was committing where he was holding himself
6 out to be a reverend that was able to engage in legal
7 work.

8 THE COURT: Did you as a reverend?

9 MR. CANTY: As a reverend, yes.

10 THE COURT: All right.

11 MR. CANTY: He said that he was reverend that
12 could engage in legal work and he would produce paperwork
13 and legal documents on behalf of incarcerated defendants
14 that he would then, in turn, turn over to them so the
15 defendants could file them pro se.

16 He used the money from the fraud to purchase
17 the copy machine and then used the copy machine to
18 further continue the fraud by producing additional
19 material that could be mailed out.

20 Those are the two charges for which the
21 defendant is pleading guilty to today.

22 THE COURT: Okay. So, Mr. Celani, I asked the
23 assistant to lay out those are the charges that is being
24 suggested you may wish to plead guilty.

25 Do you understand that those are the charges?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you understand the elements of
3 those charges as the prosecutor just laid them out?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now let's talk about the maximum
6 sentences and fines. So, on the conspiracy to commit
7 wire fraud, there's a maximum term of imprisonment of
8 twenty years. There is no minimum term of imprisonment
9 on that count.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And on that count, there is a
13 maximum term of supervised release of three years.

14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you know what supervised release
17 is?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: It's a kind of probation or parole,
20 right?

21 THE DEFENDANT: Um-hum.

22 THE COURT: So, if you get out after serving
23 time in jail, you are on supervised release for a maximum
24 of three years. And if you violate the terms and
25 conditions of that release, meaning you commit another

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1 crime, you do something else wrong, you could go back to
2 jail for another two years.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. There's a maximum fine
6 -- wow, it's either \$250,000 or two times the gross gain
7 derived from the offense.

8 Counsel, do we know which is more at this
9 point?

10 MR. CANTY: The -- it appears that it would be
11 two times the gross pecuniary gain derived from the
12 offense.

13 THE COURT: And how much money do we think that
14 would be?

15 MR. CANTY: The total loss -- well, there was
16 money that was paid back. The SEC conducted an
17 investigation to -- the defendant was able to clawback
18 approximately between forty -- between forty-five and
19 fifty percent of the money. The total loss with respect
20 to the Rainmaker Assisted Living scheme was approximately
21 \$6 million.

22 THE COURT: Okay. So that means that there
23 could be a fine as much as \$12 million.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: All right. And then there's a
2 restitution, meaning you have to pay back victims in an
3 amount to be determined by the Court.

4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. There will be a \$100
7 special assessment which you have to pay. And there's
8 also criminal forfeiture as to Count 1.

9 Do you understand all of that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now on the money laundering charge,
12 there's a maximum term of imprisonment of twenty years
13 and no minimum term of imprisonment.

14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: A maximum supervised release term
17 again is three years with two years that you could serve
18 again if you violate the conditions.

19 Do you understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Maximum fine will probably be the
22 same number?

23 MR. CANTY: It's actually significantly lower.
24 It's -- the loss was between \$170,000 and \$190,000; so it
25 would be twice that amount.

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1 THE COURT: Well, no, actually it looks like
2 then the maximum fine will be \$500,000.

3 MR. CANTY: Oh, \$500,000 if that's the --

4 THE COURT: Right.

5 MR. CANTY: Yes.

6 THE COURT: So, there's a fine of up to
7 \$500,000.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Again, there will be restitution
11 that will be determined by Judge Spatt.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And again, there will be another
15 separate \$100 special assessment that you have to pay.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Now, have you discussed
18 the sentencing guidelines with your attorney?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: The first thing I want to say about
21 the sentencing guidelines is it's something that the
22 Court must consider but they are not binding.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So earlier today Mr. LaRusso was

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1 asking, he wanted the government to stand by its estimate
2 and so forth. These are all just estimates. Everybody
3 could be wrong.

4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The only guarantee you have with
7 regard to your sentence is that statutory maximum; right?
8 The twenty years on each count.

9 Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Anything else, there's no
12 guarantee.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Good. Do you understand that even
16 if the sentence is more severe than you expect, you're
17 still going to be bound by a plea of guilty if you take
18 one today.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You can't say, oh, I got more time
23 than I wanted, Judge. I want that plea back. It doesn't
24 happen that way.

25 Do you understand?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions you want
3 to ask me or your attorney about this charges, about
4 anything we just discussed? Do you want to go through
5 anything else?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you ready to plead guilty?

8 THE DEFENDANT: I'm sorry, sir?

9 THE COURT: Are you ready to plead guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And Mr. LaRusso --

12 MR. CANTY: Your Honor, just with respect to
13 the statutory maximum, the -- under the law, the two
14 sentences may -- the district court may impose a sentence
15 to run consecutively, so just he knows that.

16 THE COURT: I thought I made that clear but I
17 will say that.

18 MR. CANTY: Thank you very much.

19 THE COURT: Okay.

20 MR. LARUSSO: Judge, he just wants me to repeat
21 what was said.

22 THE COURT: Yeah, I --

23 MR. LARUSSO: Can I take a second?

24 THE COURT: Go ahead. But I --

25 MR. LARUSSO: The Court is probably going to do

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1 it anyway.

2 THE COURT: I am going to do it anyway. I
3 thought I made this point clear but if I didn't, those
4 two maximum terms, the twenty years on each count could
5 run consecutively. So, ultimately the upper limit for
6 you here could be forty years.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay.

10 MR. CANTY: Thank you, your Honor.

11 THE COURT: Good enough?

12 MR. CANTY: Than you.

13 MR. LARUSSO: Your Honor, I think that's
14 actually in the plea agreement on page 3.

15 THE COURT: Okay.

16 MR. LARUSSO: Yes.

17 THE COURT: But it's good that we know that Mr.
18 Celani --

19 MR. LARUSSO: Absolutely.

20 THE COURT: -- understands it.

21 Mr. LaRusso, any legal reason why the defendant
22 -- oh, do you need something?

23 (Counsel and client confer)

24 MR. LARUSSO: Mr. Celani -- a practical
25 question, Judge. He says we're still agreeing that the

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1 guideline range is calculated in the plea agreement is
2 135 to 168 and that promises that were made on the record
3 earlier before we started this is still in effect. That
4 was his concern because when you said that, they could go
5 higher --

6 THE COURT: But, sir, that's true. But what I
7 want you to understand is this. When you go to
8 sentencing before Judge Spatt, it might be that Mr.
9 Larusso and the government counsel both stand up and say
10 Judge, we think the right guideline range is 135 months.
11 We both -- we all agree on that. The judge can say,
12 that's nice; I disagree or I agree but I want to sentence
13 you to more time anyway. That can all happen and you
14 have to understand that that's a risk here.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. So, the last thing was not
18 intended to change any aspect of the agreement but I just
19 want you to understand that the only legal assurance you
20 have are those statutory maximums.

21 THE DEFENDANT: I understand.

22 THE COURT: Okay. Any legal reason why he
23 should not plead guilty?

24 MR. LARUSSO: No, your Honor.

25 THE COURT: Are you satisfied with your legal

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1 representation, meaning that you have attorneys here.

2 Are you satisfied with what they've done for you up to
3 this point?

4 THE DEFENDANT: Mr. LaRusso and Mr. Oliveras
5 are excellent.

6 THE COURT: Very good.

7 What is your plea -- let's first do Count --
8 the sole count of the superseding indictment here in the
9 eastern district which charges the wire fraud conspiracy,
10 what is your plea to that count, sir?

11 THE DEFENDANT: Guilty.

12 THE COURT: Okay. And as to -- we're doing
13 Count 9, correct, counsel?

14 MR. CANTY: Yes, your Honor.

15 THE COURT: Count 9 of the indictment from the
16 Central District of Illinois, what is your plea?

17 THE DEFENDANT: Guilty.

18 THE COURT: Are you making these pleas of
19 guilty voluntarily and of your own free will?

20 THE DEFENDANT: They are voluntary.

21 THE COURT: Okay. And has anyone threatened or
22 forced you to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Other than the agreement with the
25 government that we stated on the record today and as

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1 written in the plea agreement, has anyone made any
2 promises that caused you to plead guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. Has anyone made any
5 promise as to you as to what your sentence may be?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. Understand attorneys can
8 give you an estimate, right? They could say this is what
9 I think but it can't be a promise because nobody can
10 promise that.

11 Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. So let's start -- shall
14 we do the fraud first? Does that make more sense?

15 MR. CANTY: The conspiracy; yes --

16 THE COURT: Okay.

17 THE COURT: So --

18 MR. CANTY: -- which is Count 1 of the eastern
19 district --

20 THE COURT: Yes. So starting with the wire
21 fraud conspiracy, which is the sole count of the
22 indictment in the Eastern District of New York -- all
23 right? That's the sole count.

24 MR. CANTY: There are additional counts,
25 your Honor. There are a total of eight counts in the

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1 indictment.

2 THE COURT: Wait a minute. The Eastern
3 District of New York indictment?

4 MR. CANTY: It's the superseding indictment.
5 Do you have --

6 THE COURT: Could you hand that up, please?

7 MR. CANTY: I have -- wait.

8 THE COURT: Stand by, sir. Sorry about that.
9 We're having technical difficulties.

10 (Pause)

11 THE COURT: Okay. Sorry about that. So, with
12 regard to Count 1 of the superseding indictment in the
13 Eastern District of New York, which charges a wire fraud
14 conspiracy -- do I have that right, counsel?

15 MR. CANTY: Yes, your Honor.

16 THE COURT: With regard to Rainmaker Investors,
17 can you tell me what you did in your own words that makes
18 you guilty of that count, sir?

19 THE DEFENDANT: Strictly as to Count 1 or an
20 overview of the whole situation?

21 THE COURT: You can give me both if you like.

22 THE DEFENDANT: I think you need to know it
23 all.

24 THE COURT: If it's easier, do the whole thing.
25 Go ahead.

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1 THE DEFENDANT: I practiced law in the City of
2 New York unlicensed for approximately five years which
3 was known as the Freedom Forum of New York City and the
4 Freedom Forum eventually engaged in a thing called
5 Rainmaker Realty Partners, which was a -- kind of like a
6 limited partnership to obtain money from people to build
7 nursing homes.

8 And primarily it was a Ponzi scheme. There
9 never were any nursing homes that were going to be
10 established and the money was used -- portions of the
11 money were used to pay back investors, a fake income
12 under investment.

13 And a portion of the money was left in the
14 bank. I don't remember the exact amount but it was in the
15 \$3 million range. And portions of it, I received and
16 portions of it other people received.

17 (Counsel and client confer)

18 THE COURT: About when did that happen?

19 THE DEFENDANT: Oh, from December of 2004 to
20 August of 2005.

21 MR. LARUSSO: Where?

22 THE DEFENDANT: In the Eastern District of New
23 York.

24 THE COURT: Okay. When you say that, what do
25 you mean? Where were you?

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1 THE DEFENDANT: I'm sorry, sir?

2 THE COURT: In Long Island, Brooklyn, Queens?

3 Where were you?

4 MR. LARUSSO: Where were your offices?

5 THE DEFENDANT: In New York City on 23rd and
6 6th.

7 MR. LARUSSO: And moved into Long Island later?

8 THE DEFENDANT: Yes, there was a branch in --
9 oh, boy, give me a second here -- Oakdale, Long Island.

10 THE COURT: Okay.

11 (Counsel and client confer)

12 MR. CANTY: Your Honor, with respect to the
13 jurisdiction in the eastern district, the defendant
14 alleged that the properties that he was building were
15 located in the Eastern District of New York. And there
16 were -- negotiations were made with victims that were
17 from the Eastern District of New York.

18 THE COURT: Does that sound about right, sir?

19 THE DEFENDANT: Just a --

20 THE COURT: Go ahead.

21 MR. CANTY: And the wires and mailings occurred
22 within the Eastern District of New York.

23 (Counsel and client confer)

24 THE DEFENDANT: One of the -- one of the
25 proposed properties was located in -- I call it Sunken

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1 Meadow, I don't know what the name of the city is but
2 it's in Long Island here.

3 THE COURT: Okay.

4 THE DEFENDANT: And there was another one in
5 Belle Harbor, New York. I think it was Beach 134th
6 Street, if I remember correctly. And during all of those
7 various machinations regarding those two properties, we
8 were making telephone calls and sending Internet -- you
9 know, over the wires and engaging in banking transactions
10 by wire.

11 THE COURT: Okay. Very good. Is that
12 sufficient on that count?

13 MR. CANTY: Your Honor, just with respect to
14 that count, does the defendant admit that he made
15 material false representations to investors to induce
16 them to send him money for the Rainmaker Assisted Living
17 Facilities knowing that the money was never going to be
18 used and did he guarantee twenty-five percent return on
19 their investment if they invested in what he purported to
20 be Rainmaker Assisted Living Facilities?

21 THE COURT: That's kind of compound question
22 but if you could understand and --

23 THE DEFENDANT: Could I just say I agree with
24 what he said?

25 THE COURT: That's fine if --

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1 THE DEFENDANT: That's fine; yes.

2 THE COURT: You agree with the whole thing?

3 THE DEFENDANT: Yes, I agree with it.

4 THE COURT: Very good. All right. Is that
5 sufficient on Count 1 of the eastern district indictment?

6 MR. CANTY: Yes, your Honor. Thank you.

7 THE COURT: All right. Shifting to Count 9 of
8 the District of Illinois indictment and this involves,
9 sir, you having the a/k/a Reverend Bob Hunt and the
10 discussion about a check being used for a lease of a
11 copier from the Morton Community Bank.

12 Why don't you tell me in your own words what
13 you did to be guilty of that count?

14 THE DEFENDANT: Kind of typical to what was
15 done in New York City, I ran a law firm in Peoria,
16 Illinois and this law firm was couched in -- within the
17 guise of a civil rights organization within a church and
18 I also managed the church.

19 We were engaged in doing legal work for
20 hundreds of inmates all over the United States in state
21 and federal prisons. Probably mailing-wise, we touched
22 every single federal prison and every single state prison
23 coast-to-coast in all fifty states. I would imagine in
24 the course of that approximately one year period, we
25 probably mailed 10,000 different pieces to 10,000

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1 different prisoners, that's my guess. There's a list in
2 the back of this, that -- I didn't count it but there's a
3 substantial number of inmates who became clients of the
4 organization that we were ostensibly representing in
5 post-conviction proceedings.

6 THE COURT: Okay.

7 THE DEFENDANT: Some of that was done, some of
8 it was not done. Needless to say, there's a whole bunch
9 of unhappy inmates coast-to-coast who would like to see
10 me as soon as possible. And it says in the count that I
11 used the money to obtain a copier, which is true, I did.

12 THE COURT: Okay.

13 THE DEFENDANT: I also used the Internet. I
14 mean, I readily don't know how many times, Judge, but I
15 would say thousands of times.

16 THE COURT: Okay. Let me ask you this question
17 though, I just want to make sure I understand the
18 underlying scheme as such, right? When you say some of
19 the work was done, some of it wasn't done, when you were
20 soliciting the monies, did you know you weren't going to
21 do the work?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Counsel, anything else?

24 MR. CANTY: Again, with respect to the material
25 misrepresentations to further the fraud, you claimed that

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1 your region foundation was celebrating its twenty-fifth
2 anniversary and that you had been in the business of
3 filing these -- this paperwork for a number of years
4 when, in fact, you had just started that and that you had
5 no experience in filing these types of briefs for an
6 extended period of time.

7 Is that correct?

8 THE COURT: Did you hear him?

9 THE DEFENDANT: Same as last time; I mean, I
10 agree with what he is saying.

11 THE COURT: You heard what he said?

12 THE DEFENDANT: Pretty much.

13 THE COURT: Yes?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Let's just make it clear. I
16 think what he was saying was that you were making certain
17 misrepresentations about how long the business had been
18 in operation, that you were regularly doing these things,
19 you were around for twenty-five years, you were operating
20 out of a church.

21 Do all those things make sense?

22 (Counsel and client confer)

23 THE DEFENDANT: Yes, sir, I agree with that.

24 MR. CANTY: And your Honor one additional
25 question, the use of the copy machine was -- well, the

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1 lease was purchased using money that he had obtained
2 through this fraud and he used the copy machine to
3 further the fraud to create additional material that he
4 could mail out to prospective clients.

5 THE DEFENDANT: Yes, sir, that's correct.

6 THE COURT: You heard that; yes?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay.

9 MR. CANTY: Thank you, your Honor.

10 THE COURT: All right. Mr. Canty, though you
11 may have done that with the last question you asked, why
12 don't you outline the government's proof had these
13 matters proceed to trial.

14 MR. CANTY: If we had gone to trial with
15 respect to the conspiracy charged in the Eastern District
16 of New York, we would have called witnesses that said
17 they were solicited by the defendant and others, his co-
18 conspirators and induced to invest money with Rainmaker
19 Assist Living Facilities under the belief that Rainmaker
20 was in the business of creating Assisted Living
21 Facilities.

22 They were -- they invested their money, the
23 victims invested their money because the defendant made
24 material false representations that he had individuals
25 lined up to live in the facilities. He had facilities

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1 lined up. He was in the process of getting permits to
2 open up assisted living facilities. When, in fact, that
3 was all lies; every one of those was lies.

4 He then took the money and paid back initial
5 investors with either their own money or new investor
6 money claiming that this money that they were getting
7 back in interest was procured by the success of the
8 Rainmaker Assisted Living concept.

9 THE COURT: The proof would include, I presume
10 witness statements, financial documents --

11 MR. CANTY: Well certainly we would have the
12 bank records. We would have the wire transfers of money
13 that went from individual investors, the checks that were
14 sent, the bank account records from the victims
15 indicating that they had made money. We also have the
16 wire transfers and the checks that the defendant actually
17 sent claiming to be interest payments. We have e-mails
18 that the defendant sent to individual investors.

19 So, that's the proof we would introduce with
20 respect to the conspiracy in the Eastern District of New
21 York.

22 With respect to the Central District of
23 Illinois, the evidence would consist of victims claiming
24 that they had received solicitations from the defendant,
25 that they had sent money to the defendant because their

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1 belief that he was going to do this legal work on behalf
2 of their incarcerated family members, that they did so
3 because the defendant made false representations that he
4 had been in the business, that he had been successful
5 doing that.

6 We would introduce the check specifically that
7 was used to pay for this copy machine and materials that
8 were sent to individual family members of incarcerated
9 defendants that were created as a result of the defendant
10 leasing that copy machine.

11 THE COURT: Okay. And because -- I'm not sure
12 I asked the defendant this and my geography knowledge of
13 Illinois is limited, what proof would you have that this
14 occurred in the appropriate --

15 MR. CANTY: Okay.

16 THE COURT: -- district in Illinois.

17 MR. CANTY: As by the defendant's own admission
18 but we would introduce evidence that this all happened in
19 Peoria, Illinois, which is located in the Central
20 District of Illinois.

21 THE COURT: Very good. Mr. LaRusso, anything
22 further from you?

23 MR. LARUSSO: No, your Honor. Other than an
24 application with your permission to get a copy of the
25 proceedings --

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1 THE COURT: Let me --

2 MR. LARUSSO: -- considering that there were
3 some representations made that --

4 THE COURT: Let me finish this first but
5 anything else before I rule on the plea?

6 MR. LARUSSO: Oh, nothing further, Judge. I'm
7 sorry.

8 THE COURT: Anything else from the government?

9 MR. CANTY: No.

10 THE COURT: All right.

11 So, based upon the information that's been
12 given to me, I find that the defendant is acting
13 voluntarily, that he fully understands his rights and the
14 consequences of his plea and that there is a factual
15 basis for the plea. I, therefore, will accept the plea
16 of -- or recommend the acceptance of plea of guilty as to
17 Counts 1 in the eastern district indictment and Count 9
18 of the Illinois indictment and recommend the same to
19 Judge Spatt.

20 Mr. LaRusso, you had an application?

21 MR. LARUSSO: Well actually, two; the
22 government --

23 THE COURT: Just pull the mic close to make
24 sure we get you on the record.

25 MR. LARUSSO: Judge, there are actually two;

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1 the government had asked us over the last couple of days
2 to vacate some subpoenas that had been sent out in
3 anticipation of trial. I would like to make a formal
4 application at this time that the subpoenas that were
5 signed by the Court and issued be vacated officially, so
6 that if anybody calls or there's any need to contact the
7 agencies and/or individuals, they can tell them that they
8 have been vacated.

9 THE COURT: So vacated.

10 MR. LARUSSO: Okay. And the second thing is,
11 Judge, since we've added some additional aspects to the
12 plea agreement orally on the record and I represent Mr.
13 Celani CJA, may I ask the Court for permission to use CJA
14 funds to get a copy of that transcript? I think that
15 should be made available.

16 THE COURT: I think that makes sense and also
17 put on the record that although I sealed the transcript
18 -- did I seal the -- I did not seal this transcript,
19 right? No, okay, sorry. Never mind.

20 MR. LARUSSO: No.

21 THE COURT: All right. Good. Yes, I think
22 that's fine.

23 MR. LARUSSO: Judge, thank you.

24 MR. CANTY: Your Honor, I know that you did it
25 orally on the record but did the defendant -- the

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1 government just wants to ensure that the defendant signed
2 a referral order to allow this court to take --

3 THE COURT: I believe we covered that but let
4 me check.

5 MR. CANTY: He did; great. Thank you, your
6 Honor.

7 THE COURT: Yes. Lauren knows the answer and
8 apparently it's yes.

9 Anything further?

10 MR. LARUSSO: Your Honor, Mr. Celani just
11 wondered if there was a sentencing date set. I don't
12 know if it has.

13 THE COURT: I believe it's approximately July
14 19th at 11:30.

15 MR. LARUSSO: Approximately?

16 THE COURT: Yes. Anything else?

17 MR. LARUSSO: That's fine, Judge. Thank you.

18 MR. CANTY: All right. Thank you.

19

20 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 22nd day of April, 2013.


Linda Ferrara

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